

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

WILLIAM E. DUGAN, et al.,

Plaintiffs,

v.

ROCKFORD BLACKTOP CONSTRUCTION  
CO., an Illinois Corporation, f/k/a ROCKFORD  
BLACKTOP, INC., a Nevada corporation,

Defendant.

Case No.: 08-CV-2651

Judge: Amy J. St. Eve

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**  
**TO PLAINTIFFS' AMENDED COMPLAINT**

NOW COMES Defendant, ROCKFORD BLACKTOP CONSTRUCTION, CO., incorrectly identified as “ROCKFORD BLACKTOP CONSTRUCTION, CO., an Illinois Corporation, f/k/a ROCKFORD BLACKTOP, INC., a Nevada corporation”, by and through its attorneys, HINSHAW & CULBERTSON LLP, and for its Answer and Affirmative Defenses, states as follows:

1. Defendant admits that Plaintiffs purport to bring this action pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1132, 1145 (hereinafter “ERISA”) and, therefore, jurisdiction is appropriate pursuant to 28 U.S.C. § 1331. Defendant denies engaging in any wrong-doing and denies the remaining allegations contained in this paragraph.

2. Defendant lacks sufficient knowledge or information to form a belief as to whether Plaintiffs are the now acting Fiduciaries of the MIDWEST OPERATING ENGINEERS WELFARE FUND, MIDWEST OPERATING ENGINEERS PENSION TRUST FUND, OPERATING ENGINEERS LOCAL 150 APPRENTICESHIP FUND and LOCAL 150 I.U.O.E. VACATION SAVINGS PLAN and, therefore deny and leave the Plaintiffs to their proof thereof.

Defendant admits that Plaintiffs contend that the listed Funds are “employee welfare benefit plans” and “plans” within the meaning of ERISA. Defendant denies the remaining allegations contained in this paragraph.

3. Defendant admits that Plaintiffs assert it is an “Employer” within the meaning of ERISA. The remaining allegations contained in this paragraph refer to written instruments, which have not been attached to the Complaint and, hence, Defendant denies the remaining allegations contained in this paragraph.

4. The allegations contained in this paragraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this paragraph.

a. The allegations contained in this subparagraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this subparagraph.

b. The allegations contained in this subparagraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this subparagraph.

c. The allegations contained in this subparagraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this subparagraph.

d. The allegations contained in this subparagraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this subparagraph.

e. The allegations contained in this subparagraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this subparagraph.

f. The allegations contained in this subparagraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this subparagraph.

g. The allegations contained in this subparagraph refer to a written instrument which has not been attached to the Complaint and, hence, Defendant denies the allegations contained in this subparagraph.

5. This paragraph states a legal conclusion and, thus, an answer is not required. To the extent an answer is required, Defendant denies the allegations and conclusion contained in this paragraph.

a. Defendant denies the allegations contained in this paragraph.

b. Defendant denies the allegations contained in this paragraph.

6. Defendant denies the allegations contained in this paragraph.

7. Defendant denies the allegations contained in this paragraph.

8. This paragraph states a legal conclusion and, thus, an answer is not required. To the extent an answer is required, Defendant denies the allegations and conclusion contained in this paragraph.

WHEREFORE, Defendant, ROCKFORD BLACKTOP CONSTRUCTION, CO. moves for an Order of the Court dismissing this case with prejudice and awarding Defendant its costs of suit.

**DEFENDANT'S AFFIRMATIVE DEFENSES**

1. The Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.
2. The Plaintiffs' claims are barred by the doctrine of unclean hands.
3. The Plaintiffs' waived any right to audit the Defendant's records inasmuch as Plaintiffs' conduct during their most recent audit demonstrates their motivation for conducting the instant audit is to advance an improper purpose.
4. Any costs or attorneys fees incurred by the Plaintiffs were incurred solely because of the unreasonable and inappropriate conduct of the Plaintiffs and were not reasonably and necessarily incurred to enforce rights under any contracts or agreements with the Defendant.

WHEREFORE, the Defendant, ROCKFORD BLACKTOP CONSTRUCTION, CO., moves for an Order of the Court dismissing this case with prejudice and awarding Defendant its costs of suit.

Respectfully submitted,

HINSHAW & CULBERTSON LLP

By: s/Lori L. Hoadley  
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**AFFIDAVIT OF SERVICE**

The undersigned certifies that on August 1, 2008, a copy of the foregoing Defendant's Answer and Affirmative Defenses to Plaintiffs' Amended Complaint was electronically served via the U.S. District Court CM/ECF E-Filing System upon the following:

**Dugan v. Rockford Blacktop Construction Co.**

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